IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/10/2003

Coram

The Honourable Mr.Justice V.KANAGARAJ

Criminal Revision Case No.1361 of 2003

A.K.Gupta ... Petitioner

-Vs-

The State by
SPE/CBI/ACB,
Chennai. ... Respondent

Revision filed under Sections 397 r/w. 401 of the Criminal Procedure Code praying for the relief as stated below.

For Petitioner : Mr.V.Dhanapalan

For Respondent : ---

:O R D E R

This criminal revision case has been filed by the first accused, among the three, against the order dated 21.08.2003 made in Crl. M.P. No.91 of 2003 in C.C. No.5 of 2000 by the Court of the learned X Additional Special Judge for CBI Cases, Chennai, thereby dismissing the application filed by the petitioner under Section 204 of the Criminal Procedure Code.

2. Tracing the history of the case, it comes to be known that the petitioner, who was a Major General in the Indian Army, and two others, viz., the second accused Lt. Colonel and the third accused being a Company, have been charged by the respondent/CBI for having entered into a criminal conspiracy during the period October 1987 - February 1988 in Madras and other places and cheated the Government of India in respect of placing orders for the supply of 'Meat Tinned Kheema' from M/s. Costa and Company, and the petitioner and the second accused, in abuse of their position as public servants, caused pecuniary advantage to the third accused company fraudulently and dishonestly, thereby causing a loss of Rs.61,19,541-23 to the Exchequer in pursuance of the said criminal conspiracy and the petitioner, knowing full well that there are sufficient stocks of Meat Tinned Khemma for the troops in Sri Lanka, issued oral orders to the second accused on 4.2.1988 to go in for the local purchase with the third accused company and the second

accused carried out the orders and the third accused company prepared false records for the supply of Meat Tinned Khemma and thus, the petitioner and the other two accused have committed an offence punishable under Sections 120-B and 420 IPC and Section 5(2) r/w. 5(1)(d) of the Prevention of Corruption Act, 1947.

3. While such being the position, the petitioner/first accused has filed a petition under Section 204 Cr.P.C. seeking to discharge him from the said case on certain grounds such as that in the evidence of P.W.1, while adducing evidence and marking Ex.P.1 sanction order, it is not disclosed whether the authority had applied its mind; that P.W.1 only stated that he authenticated the sanction order and that the same was not accorded as per Section 19 of the Prevention of Corruption Act, 1988, but was granted as per Section 6 of the Prevention of Corruption Act, 1947; that the said witness deposed differently; that therefore, the prosecution has elicited that some other records have been considered during the process of sanction, which have not been mentioned in the sanction order and that the file maintained in the Ministry pertaining to the sanction proceedings has also been not placed before the Court, and therefore, there is no material for application of mind by the sanctioning authority and hence, the trial cannot continue further.

4. On the other hand, the respondent/CBI has filed a counter before the lower court on averments such as that on a perusal of Ex.P.1 sanction order, it could be seen that the sanctioning authority perused all the records which are relevant for consideration and some other matters which were reproduced by the sanctioning authority in the order and therefore, the sanctioning authority has thoroughly examined all the documents, viz. not only the allegations pertaining to the case, but also the back papers before according sanction, which would show that the sanctioning authority has applied its mind before according sanction and further, the sanctioning authority has considered all the matters pertaining to the case in detail and has arrived at a conclusion to the effect that prima facie, a case has been made out against the petitioner/first accused.

5. Based on the above pleadings, the lower court would also consider that P.W.1, being the Deputy Secretary, Ministry of Defence, who is empowered to authenticate the sanction order on behalf of the President of India, has authenticated the order marked as Ex.P.1 and deposed with reference to the said facts; that the further evidence of P. W.1 to the effect that the sanction order was put up before the Minister, who agreed with the same and only then the sanction order was authenticated under his signature which could be seen on a perusal of Ex.P.1, and therefore, all material particulars have been considered prior to the according of sanction.

6. The lower court having discussed all these things has remarked that no material has been put forth by the petitioner to show that the sanctioning authority has not considered the material particulars of the case pertaining to the subject viz., supply of 'Meat Tinned Kheema' and in the said circumstances, the inclusion of liquid petrol does not in any manner detract the sanctioning authority of the validity of the sanction order and that it is not established by the petitioner prima facie that the sanction

order marked as Ex.P.1 has been passed frivolously or speculatively. But, on the other hand, the averments contained in Ex.P.1 would only go to show that the sanctioning authority has considered the various materials placed before him prior to according sanction and rightly accorded the same against the petitioner, and therefore, the lower court, further remarking that there is no reason in the contention of the petitioner/A.1 and further more, the question whether the sanctioning authority has applied its mind or not has to be decided at the time of conclusion of trial, but however, since the petitioner has invited the decision of the Court by way of this petition, it has to have its own discussion and decision and further stating that the decision relied on by the petitioner reported in I (2002) CCR 332 (Udainarain V. State of U.P. through C.B.I.) is not applicable to the facts and circumstances of the case in hand, would ultimately dismiss the said petition.

7. During arguments, learned counsel appearing on behalf of the petitioner, besides reiterating the same facts and circumstances which have already been traced in the petition above, would also cite a decision reported in (1997) 7 SCC 622 (Mansukhlal Vithaldas Chauhan V. State of Gujarat), wherein it has been held as follows :

"The sanction is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. One of the guiding principles for sanctioning authority is to keep e public interest and, therefore, the protection available under Section 6 to a public servant cannot be said to be absolute. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty. ...The validity of the sanction would, therefore depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material collected during investigation and placed before it. This fact can also be established by extrinsic evidence by placing relevant files before the Court to show that all relevant facts were considered by the sanctioning authority."

On such arguments, learned counsel would seek the relief sought for.

8. On the contrary, this Court, even when the above revision came up for admission, considering the nature of the revision and hearing the petitioner regarding admission, is able to find that it was a discharge application filed under Section 204 Cr.P.C. by the first accused in the case after the commencement of the trial before the trial court and in fact, this Court is given to understand that the sanctioning authority in the case in hand has been examined as P.W.1 and that the sanction order has been marked through him as Ex.P.1. It is only testifying the validity of Ex.P.1 and the manner in which the sanction has been accorded by the authority concerned, the

petitioner had come forward to file the discharge application before the trial court and at the outset, it needs to be mentioned that it is not the stage at which a discharge petition could be filed, i.e. immediately after the examination of P.W.1 regarding the sanctio n and marking of the sanction order. Absolutely no material has been placed on record or even supplied nor any decision is cited for the petitioner to have filed the discharge petition at this stage testifying the validity of the sanction order and questioning the manner in which the sanction order was accorded in spite of these materials having been placed before the petitioner along with the charge sheet and ample particulars having been afforded at the time of framing of the charges and the preliminary questioning, but keeping complete silence, immediately after examination of P.W.1, the sanctioning authority has chosen to testify the validity of the sanction order as though something has legally gone wrong in the said order without being in a position to impress the Court pertaining to the point raised.

9. It is not only undesirable to entertain such an application during the course of trial dealing with the subject in piecemeal since it is only proper for filing such an application at the time of framing of the charges and preliminary questioning or else, after adducing evidence, only during the final arguments, such points could be argued for an overall consideration of all the facts and circumstances of the case of the prosecution, the evidence placed on record, including the oral evidence of P.W.1 and the contents of Ex.P.1 document as well as the sanction order of P.W.1 and for arriving at a valid decision by the Court. Therefore, the lower court, in spite of knowing that it is not proper on the part of the petitioner to have come out with such an application, since such an application has been filed expecting the remarks of the Court, has also gone into the details of the petition, the counter and the position of law and has ultimately rendered its order. It is not only the conclusion that has been arrived at in the order passed by the lower court, but also the manner in which such a conclusion has been arrived at since being in the expected line of law, this Court does not see any inconsistency or infirmity or legal flaw or an error apparent on the face of the order of the lower court, and therefore, the interference of this Court sought to be made into the well considered and merited order passed by the trial court is neither necessary nor warranted in the circumstances of the case.

In result, the above criminal revision case does not merit acceptance and it becomes liable only to be dismissed at the stage of admission itself and is dismissed accordingly.

The order dated 21-08-2003 made in Crl.M.P.No.91 of 2003 in C.C.No.5 of 2000 by the X Additional Special Judge for CBI Cases, Chennai, is hereby confirmed.

However, during arguments, the learned counsel for the petitioner has an alternative plea requesting the Court that in the event of this Court rejecting to grant the prayer of the petitioner to quash the proceedings, at least, the personal attendance of the petitioner before the trial court could be dispensed with in consideration of the petitioner's age,

status, etc. and in the circumstances that are prevalent, he may not be able to cope with all future dates of hearing. Therefore, while dismissing the above revision petition, the personal attendance of the petitioner before the lower court is hereby ordered to be dispensed with on all future dates of hearing and he is permitted to appear by pleader except for those hearings wherein his presence will become indispensable such as for preliminary questioning, questioning under section 313 Cr.P.C., pronouncement of Judgment, etc. when the lower court will be at liberty to summon him in accordance with the procedures laid down under Section 205 Cr.P.C.

Consequently, Crl.M.P.Nos.8421 to 8422 of 2003 are also dismissed.

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Index:Yes.
Internet:Yes.

To
The Xth Additional Special Judge for CBI Cases, Chennai.

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